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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 385.

THE CITY OF ST. LOUIS, a Municipal Corporation, ANNE M. EVANS, HENRY ERNST and SARAH ERNST,

Petitioners,

against

CHARLOTTE CLARK LINDSAY,

Respondent.

REPLY BRIEF OF PETITIONERS EVANS AND ERNSTS.

A. M. EVANS,
Attorney for Petitioners
Evans and Ernsts.

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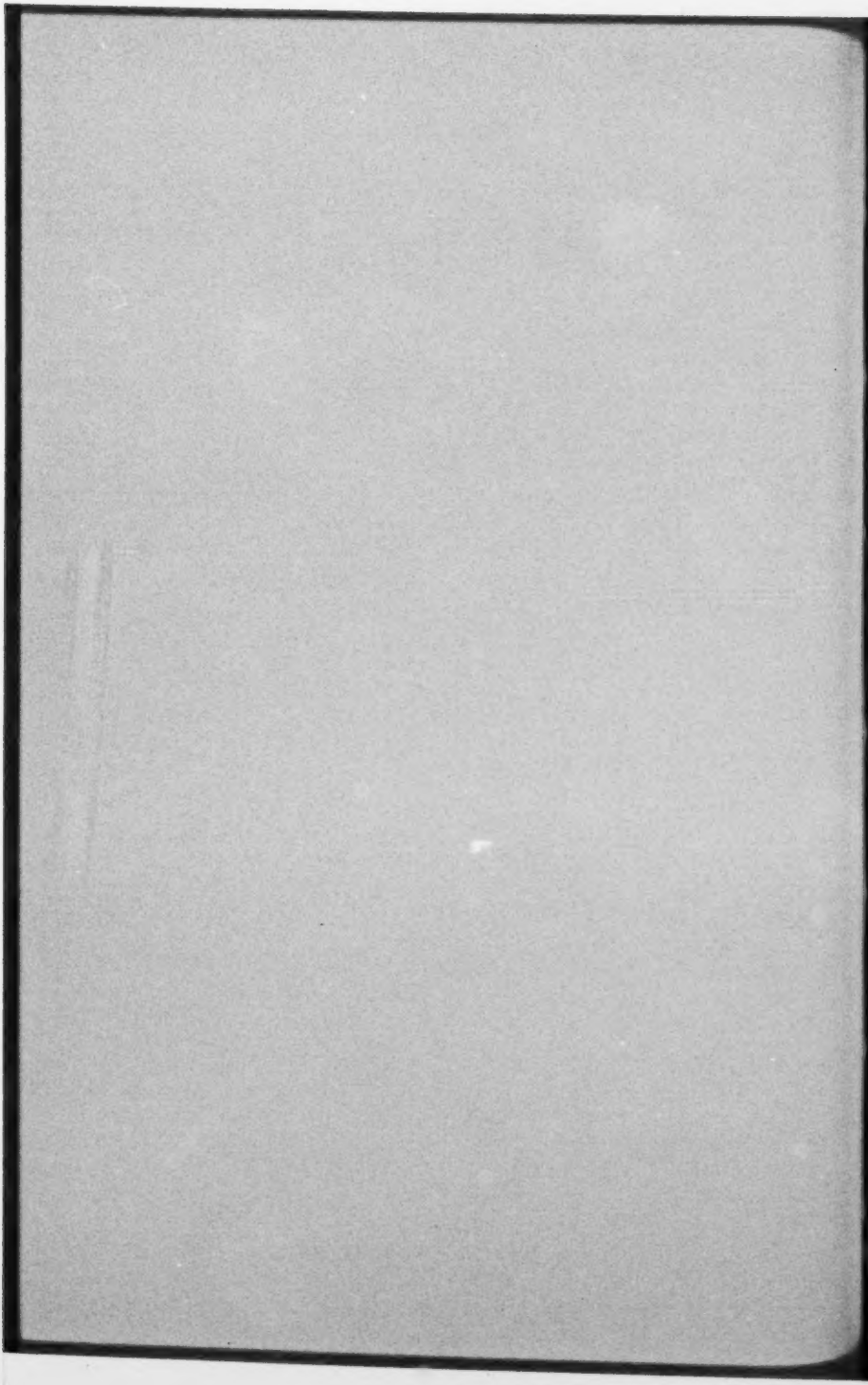

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To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Evans and Ernsts, respectfully ask that leave be granted to reply to the Brief of Respondent in Opposition to the Petition for Writ of Certiorari.

REPLY TO RESPONDENT'S ARGUMENT.

I.

It appears that judgments in tax cases in the state courts are treated as res adjudicata in the Federal Court. Therefore the notice as to the tax suit, its judgment, the notice of the foreclosure and the sale, should have been considered by the Supreme Court of Missouri as "res adjudicata." It was said to be "moot," while refusing to pass on the federal question of notice, and refusing to treat the judgment and sale as "Res adjudicata" so that clear title vested in the purchaser at the sale; the Missouri Supreme Court treated the title as still vested in Mrs. Lindsay, and Petitioner Evans as guilty of a fraud on the property of Mrs. Lindsay because of the sale of the property to the Ernsts.

In the case cited by respondent, Honeyman v. Hanan, 300 U. S. 14, 18, see Note 5, Page 25, Chief Justice Hughes says:

> "In the exercise of our appellate jurisdiction we have the power not only to correct errors in the judgment under review, but to make such disposition of the case as justice requires. We have applied this principle to cases coming from state courts where supervening changes had occurred since the entry of the judgment, and where the record failed to state the facts underlying the decision of the Federal Question."

If Government is to continue, it is necessary that City, State and Federal Government have the power to collect tax judgments. All these facts are before this Honorable Court, a valid tax judgment which has been collected by due process of law. In this instance, also, supervening changes have taken place. While this property was in the

possession of petitioner Ernst, all subsequent taxes were paid the City and state. He has recently received notice from the City of St. Louis that suit will be filed because no taxes have been paid on this property the past three years, since, in response to the order of Court, possession to the property was turned over to Respondent's attorney, Mr. Hall, who has collected rents for the past three years, but informed attorney for petitioners that he had not agreed to pay the taxes on the property.

It is pointed out that this Honorable Court is conclusively bound by the facts found by the State Court. The State Court found facts, which upon a proper and just legal interpretation would indicate the tax judgment was duly foreclosed; that title to the property was vested in petitioner Evans at the time she sold said property; that Charlotte Clark Lindsay could have had no title at this time, and that, therefore, she had no standing in a Court of Equity to claim fraud on the part of the purchaser at the tax sale. It was not necessary to include in the transcript evidence which was not admissible in the suit in equity, and whose admission by the Missouri Supreme Court was error. Respondent says on Page 3, line 2:

> "Respondent's petition is not contained in the transcript."

This statement is untrue. **Respondent's petition is included in the transcript** (R. pages 7 to 13), so that the Supreme Court of the United States can review it. Even though all the facts properly pleaded therein be true, if the tax judgment is res adjudicata, the notices therein and in the enforcement thereof constitutional, and in accord with the Fourteenth Amendment of the Constitution of the United States, Mrs. Lindsay's suit in equity should have been dismissed.

II.

In Petitioner's Brief the transcript was closely followed and the question of due notice was strictly adhered to in regard to Mrs. Lindsay's legal rights. But for her attorney to continue to insist that "Every rule of natural justice cries out against this sale and the actions of petitioner Evans" (p. 12, line 13, Respondent's Brief), and that Mrs. Lindsay is entitled to actual notice is unwarranted when at that time she was doing all in her power to avoid receiving any kind of notice, and it is public knowledge that her husband, and her son by a former husband, were wanted by the Federal authorities for the medical diploma mill scandal in Kansas City, and are now serving sentences for fraudulent use of the mail in connection therewith. This property was security for bond given in the Federal Court. It is especially because some citizens seek to avoid actual notice that the law permitting notice by publication becomes justifiable. This law has been held constitutional by the Supreme Court of Missouri in the Schwab case (Petitioners' Brief, page 50).

Reference has also been made to the Miller case (page 6, Respondent's Brief). The property involved therein was property formerly belonging to The International Insurance Company, of which Mr. Emmet O'Malley was receiver as Insurance Commissioner of Missouri. Mr. O'Malley is also serving a term in the Federal Penitentiary. Your petitioner was unable, at the time the Miller case was tried, to secure the necessary data to show that Mr. O'Malley's petition to the Federal Court represented that certain properties were of no value because they had been sold for taxation, without specifying the properties. No report was made of the fact that the Missouri Supreme Court had rendered a judgment which in effect took the property from the purchaser at the tax sale, and allowed

a successor mortgagee, the Missouri State Life Insurance Company, of which Mr. O'Malley became receiver and whose interest had been foreclosed, to secure possession of the property. Your petitioner was too inexperienced to cope with such opponents or to properly present the question of federal jurisdiction to the United States Supreme Court in securing a petition for a writ of certiorari.

Your petitioner Evans has taught Civics and Government in the public High Schools of the City of St. Louis, and as such has an academic interest in this question as well as a legal and personal interest.

The cases cited do not substantiate respondent's contention. The taxes, interest and costs were not paid in the Mangold case, as in the foreclosure of the tax case, in which petitioner Evans acquired the property. In Davis v. McCann, 143 Mo. 172, the Execution Court still was in control of the judgment, and could set the judgment aside. In Waters-Pierce Oil Co. v. State of Texas, 212 U. S. 96, 97, Justice Holmes said:

> "We can only interfere with such legislation and judicial action of the states enforcing it, if the fines imposed are so grossly excessive as to amount to a deprivation of property WITHOUT DUE PROCESS OF LAW" (my emphasis).

The Supreme Court of the State of Missouri undertook to do what the United States Supreme Court would not do.

Respectfully submitted,

A. M. EVANS,
Attorney for Petitioners.